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2022 MAR 17 PM 5:44

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E.D.N.Y.
APRIL 11 2022
AFTER HOUR 10 AM P.M.
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March 17, 2022

To: The Honorable Eric R. Komitee
United States District Court for the Eastern District of New York
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Capogrosso v. Gelbstein, et al., No. 18 Civ. 2710

Judge Komitee,

This letter is in response to the letter submitted to you today (Dkt. #291) by the Office of the Attorney General for the State of New York.

Counsel James M. Thompson falsely and erroneously claims the responses filed in support of the opposition to the Report and Recommendations of the Magistrate Judge are unauthorized sur-replies. This is simply not true.

I. REPLY TO RESPONSE IS NOT A SUR REPLY

A reply filed to a response is not a sur reply which makes the responses filed in the instant matter categorically not qualified to be considered as sur replies.

As you are likely aware of, an individual filing an opposition to Report and Recommendation typically receives a response from the opposing party. Upon that receipt of a response, the party opposing the Report and Recommendation typically files a reply to that response. After this, if the responding party wishes to file additional arguments, this would be a sur-reply requiring leave from the Court.

In the instant matter, the filings filed are clearly replies to the responses that were filed and therefore no leave from the Court is required because these are categorically not sur-replies.

As an example for your reference, please reference the webpage from the United States District Court of Maryland which clearly distinguishes between (1) Responses, (2) Replies To Responses and (3) Sur-Replies. As it can be seen, Opposing Counsel's categorization of the filings in the instant matter as sur-replies are entirely erroneous and baseless.

II. OBJECTIONS TO REPORT AND RECOMMENDATIONS ARE NOT MOTIONS

Moreover, Counsel James M. Thompson cites rules and standards pertaining to motions practice which are not applicable to the instant matter because this is not a motion that is being discussed but rather Opposition / Objection to Report and Recommendations.

The Opposition and Objections in the instant matter are categorically different than motions for several reasons which are not to be discussed here but should be noted that they are likely to consist

of arguments and discussions that pertain to the entire proceeding as a whole both procedurally and substantively which makes them distinct from an ordinary motion.

Notwithstanding this categorical distinction between motions and objections to Report and Recommendations of a Magistrate Judge, the Plaintiff maintains a fundamental right to reply to the responses files to objections of the report and recommendations filed in the instant matter pursuant to their fundamental due process right under the 5th and 14th Amendment of the U.S. Constitution to be heard and argue their matter fully.

Opposing Counsel James M. Thompson attempts to prejudice and preclude the arguments made in the replies as objections falling outside of the 14 day period to object to the report and recommendations, erroneously, as if the Plaintiff does not have an opportunity to file a reply to the responses filed in the instant matter normally throughout the course of litigation for due process reasons that are clear such as being able to litigate a matter fully and comprehensively.

Clearly, the arguments and points raised by Opposing Counsel are misapplied and misconstrued to prejudice the Plaintiff from their due process rights to litigate the instant matter pursuant to the due process of law and for this reasons should be disregarded.

III. CONCLUSION

If Counsel James M. Thompson is not able to identify the difference between a reply and a sur-reply, does it then seem likely that they are correct on their assertions and legal conclusions raised in their responses to the instant matter?

If a lawyer cannot distinguish between a reply and a sur-reply, surely they are not going to be able to distinguish between when judicial immunity is applicable versus when it is not.

And for these reasons, this Honorable Court should disregard the false and erroneous categorizations of Opposing Counsel describing the replies filed in the instant matter as sur-replies and instead consider the issues raised in this matter fully and comprehensively pursuant to the due process of law.



Mario H. Capogrosso
21 Sheldrake Place
New Rochelle, NY 10804

Exhibit A - U.S. District Court for District of Maryland distinguishing between responses, replies, and sur-replies



UNITED STATES DISTRICT COURT
District of Maryland
Hon. James K. Bredar, Chief Judge | Catherine M. Stavlas, Clerk of Court

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Responses and Replies

Response to a Motion

To file a response to a motion, follow the [standard filing procedure](#). Choose **Responses and Replies** from the main **Civil** menu and then select one of the following events, as appropriate:

- Response
- Response in Opposition to Motion
- Response in Support of Motion
- Response to Motion

After attaching your document, the system will show a list of all pending motions. Check the motion(s) to which your response relates, and continue as you would for filing any other document.

Reminder:

- Responses to motions and subsequent replies must be linked to the [motion](#).
- Surreplies cannot be filed without leave of court.

Reply to a Response to a Motion

To file a reply to a response to a motion, follow the [standard filing procedure](#). Choose **Responses and Replies** from the main **Civil** menu and then select **Reply to Response to Motion**.

After attaching your document, the system will show a list of all pending motions. Check the motion(s) to which your reply relates – **do not link to the Response**. Continue as you would for filing any document.

Surreply

A surreply is not permitted to be filed without leave of court. See Local Rules 105.2.a. Therefore, before a surreply can be filed, you must:

1. File a **Motion for Leave to File Document** using the [standard filing procedure](#).
2. Attach the [motion as the main document](#).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK



MARIO H. CAPOGROSSO

Plaintiff

-against-

18-CV-2710

ALAN GELBSTEIN, et. al

AFFIRMATION OF SERVICE

Defendants

I, Mario H. Capogrosso, declare under penalty of perjury that I have served a copy of the attached Letter in Response to Motion to Strike (Dkt. #291) upon:

Maura Douglas, Esq.
Davis Polk & Wardwell, LLP
450 Lexington Avenue
New York, NY 10017

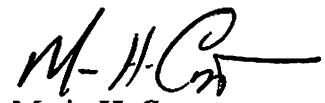
James Thompson, Esq.
Assistant Attorney General
28 Liberty Street
New York, NY 10005

Sadiq Tahir
2994 Coney Island Avenue
Brooklyn, NY 11235

Pec Group of NY
935 S. Lake Blvd. #7
Mahopac, NY 10541

via U.S. Postal Service First Class Mail, this 17th day of March 2022.

New Rochelle, NY
March 17, 2022.



Mario H. Capogrosso
21 Sheldrake Place
New Rochelle, NY 10804
(914) 806-3692

TO: PRO SE OFFICE

FROM: MARIA H. CAPOGRASSO

RE: CAPOGRASSO v. GELBSTEIN, et.al.

18-CV-2710

4/11/21

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CLERK
U.S. DISTRICT COURT
E.D.N.Y.
FEB 2022

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